

# LENDER'S UPDATE

Supplement to the Portland District News

## HELPFUL HINTS ON ELIGIBILITY

- \* Submission of **SBA Form 912, Statement Required by Laws & Executive Orders**, is required for the following:

- for the proprietor of a Sole proprietorship;
- for each partner of a Partnership;
- for each officer, director and each holder of 20% or more of the voting stock of a Corporation;
- for each member and designated manager of an LLC;
- for any other person, including a hired manager, who has authority to speak for and commit the borrower in the management of the business.

Yes answers to questions 6, 7 or 8 require a written statement profiling the event, including dates and the disposition. If the event is not singular and remote in time (over 10 years), the processing must be withheld pending clearance from Headquarters.

- \* **IRS verification requirements: SBA Form 4506**

SBA policy requires that the figures for the primary source of repayment must be confirmed with the IRS, if it is based on either the applicant SBC's financial data or the seller's going concern data.

IRS contact person is Pat Koford. (801) 334-4170 (voice). (801) 334-4178 (fax)

- \* **Franchise loans**

Look first on the SBA Franchise Registry at [www.franchiseregistry.com](http://www.franchiseregistry.com). If the franchisor is listed, it was deemed eligible as of a specific date. **A Certificate of No Change** from the franchisor is required in lieu of SBA review of

the FTC Disclosure circular.

Some common reasons for franchise ineligibility are as follows:

- Unreasonable transfer or assignment restrictions
- Excessive fees

- \* **Borrowing causes**

If the loan request is to purchase a going concern, comment in your credit memorandum as to the reason for sale. Some common reasons include retirement, other business ventures, and estate settlement. The new owners must have a plan to revive/expand a stagnant business operation.

- \* **Guaranty Fees**

Policy requires that the fee be paid within **90** days of approval, or the guaranty is subject to cancellation.

## ENVIRONMENTAL REPORTS NOT ACCEPTED WITHOUT CERTIFICATIONS!

Starting January 1, 2000 no environmental risk analysis (Phase I and Phase II) will be accepted, by the Portland District Office, for review without the certifications required by the SOP. A contractor hired to evaluate the environmental risk of collateral in any SBA loan program must meet SBA standards as described in SOP 50-10(4) SUBPART "A" at page 126-127. Contractors must provide the Lenders with evidence of adequate expertise and impartiality as described in the SOP and must certify under 18 USC § 1001 as to the accuracy of the information provided. Call Joe Martinez at 503-326-5214 or Sue Pickgrobe at 503-326-5226 for a sample certification format.

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## Assessing Environmental Risk: SBA Requirements

When real property is used as business collateral for non-PLP loans, the Portland District Office must review an environmental risk assessment. We review for the risk that the value of our collateral will be diminished, and for the risk that the borrower's funds may be drained by a required cleanup.

Every environmental report to be reviewed must be current within a year of submittal. The minimum needed is an environmental questionnaire signed by the owner of the property and signed by the lender (or CDC). If there is a reasonable risk of contamination from the property or surrounding properties, we need a higher level report. Although a questionnaire and Transactional Screen may be provided at the next level, if the Transactional Screen lists any possible risk on the property or surrounding properties, we will want an environmental specialist to evaluate that risk. Therefore, we advise that in most cases a Phase I will be the most efficient way to evaluate the risk. When the risk assessment starts with a Phase I, no questionnaire is needed.

For any building that was built prior to 1978, we advise getting a Phase I because of the potential for asbestos and lead paint. If either is present, OSHA requires that business to post a notice specifying the location of the asbestos and lead paint, and to have an abatement plan in place to be followed if there is any damage repair or remodel.

After any report is submitted, whether with the application or at a later date, the District Counsel will provide an Environmental Notice, stating

whether the report was accepted and the reason for any denial. If the application does not include a satisfactory environmental report, then the environmental requirements paragraph of the authorization must include an additional paragraph (paragraph "b" in the authorization boilerplate), as the indication that additional reporting is necessary.

Please note that the borrower may include the cost of an environmental report in the use of loan proceeds for both 504 and 7(a) loans.

Please forward any questions about these requirements to Sue Pickgrobe, District Counsel, at 503-326-5226, or Joe Martinez, Chief, Finance Division, at 503-326-5214.

## Mandatory Lender Reporting

Upon approval of an SBA 7(a) loan, you must start **monthly** reporting on the **SBA Form 1502** to Colson Services. For each loan, the amount disbursed that month (if any) must be reported as well as the amount that remains undisbursed. If you have any questions about the SBA Form 1502, contact Tracy Schmidt at Colson at (212) 266-0651. She services Oregon and Washington for the SBA.

## COLSON CONTACT NUMBERS

50 basis point fee reporting & status information:  
Tracy Schmidt at 212-266-0651

Information on 7(a) secondary market loans:  
Kelmis Batista at 212-266-7909

## Mandatory Form 2004 Reporting

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 ☆ IS IT REALLY PAID IN FULL (PIF)? ☆  
 ☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆

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should be done by the lender.

- ⇒ Document the use of loan proceeds.
- ⇒ Be cautious of conflict of interest situations, i.e. when a lender direct loan competes with SBA guaranty loan. Confer with SBA Liquidation Official prior to and during liquidation.
- ⇒ Justify foreclosure actions with required appraisals, environmental reviews and site visits.

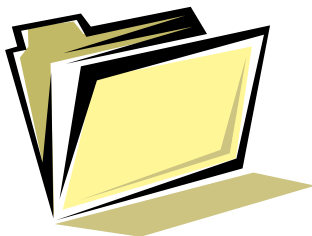


The following article published in the July 1999 NAGGL Update bears repeating.

"A special liquidation file should be developed that will include all components of the liquidation process." This file can be inserted into the regular servicing docket file. A suggested format would include six sections:

1. Liquidation plan + modifications
2. Administrative documents
3. Litigation documentation
4. Correspondence
5. Financial statements
6. Miscellaneous

"Maintaining a file such as the one suggested would accelerate the 'Final Wrap Up' process, improve purchase turn around time and reduce guaranty percentage repairs."

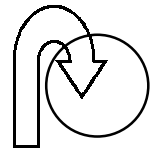


## FROM THE LEGAL CORNER

### Is Your Borrower's Residence a Titled Mobile Home?

This is a reminder that under Oregon law, *all mobile homes must be titled* unless the owner is in title to the land upon which the mobile home is located AND the owner gets an exemption from registration from the state. If the owner does not get an exemption, the mobile home must be titled as personal property, and is not subject to any trust deed that you may take on the land. You may get a trust deed and title insurance only to learn upon foreclosure that a different lender has a first interest in the mobile home. Always investigate whether a mobile home is titled or not, if you are intending to use it as collateral on land owned by the borrower.

### AVOID PITFALLS!



### **BROADEN YOUR UCC SEARCHES!**

***Always search in the names of the individuals who own the borrowing entity!***

The SBA loan authorizations no longer describe how to perfect lien interests. When the authorization states that a first perfected security interest is required, the lender has the duty to properly perfect that interest.

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If your borrower is an entity, such as a corporation, partnership or LLC, searching that name alone may not be enough to ensure that you have a first interest in the borrower's assets. That borrower may have recently changed its form of entity or gone from individual ownership to entity ownership. The Oregon courts put a duty on the lender to broadly investigate UCC filings before perfecting a security interest.

The Official Comments to ORS 79.4020(7), dealing with debtor name changes, states:

"Subsection (7) also deals with a different problem, namely whether a new filing is necessary where the collateral has been transferred from one debtor to another. This question has been much debated both in pre-Code law and under the Code. This Article now answers the question in the negative. Thus, any person searching the condition of the ownership of a debtor must make inquiry as to the debtor's source of title, and must search in the name of a former owner if the circumstances seem to require it."

Another lender may have lent to the same borrower prior to incorporation. If you only search the corporation and not the names of the individuals, you may think you are in a first position only to learn years later that a different lender, or seller of the business to your borrower, filed a security interest in the names of the individuals before you did. Under Oregon law, you may have a second security interest instead of the 1st position you expected.

And don't expect to go after the borrower for fraud if the loan application does not precisely lay out the prior interests. An unsophisticated

borrower who has revealed part of the picture to you, at the time of application, may be found credibly ignorant by the court, leaving you as the second lender with an unsecured debt that can be discharged in bankruptcy.

Query your borrowers as to dates of incorporation, formation of LLC's etc. Ask about changes of entity in recent years. And always search in the names of the individuals who own the borrowing entity!



## How to Avoid Common Authorization Wizard Errors

- 1 GET A HARD COPY OF THE BOILERPLATE. If you have not done so already, we strongly encourage you to get a hard copy of the most recent 7(a) (Version 2.3) or 504 (Version 2.0) Authorization language. Seeing a hard copy of the entire authorization will help you to understand how the Wizard works. There are two main sections: "Boilerplate" and "Appendix A Standard Collateral Conditions." These two sections comprise the standard boilerplate for SBA business loans.

Appendix A of the boilerplate for either 7(a) or 504 loans, (pages A-4 to 5) lists 'optional' paragraphs to include when taking a junior real property lien. However, many of these paragraphs are not really optional! The location of the real estate determines which paragraphs are mandatory. To locate these "Boilerplate options," go to Appendix B. They are numbered 2 through 10. These same options are listed on page A-4 to 5 as paragraphs c – k (although unfortunately, not in the exact same order as the 2-10 listing in appendix B).

Next go to Appendix B, pages B-2 through 4,

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which lists every state and the required options for each state. For Oregon, the required options are 2, 3, & 6, which translate to c, d, and i on page A-4.

Contact Esther Schulze at 503-326-5227 for a hard copy of the boilerplate.

- 2 OPERATING COMPANY. Make sure that the Operating Company is designated on the front page as a co-borrower or is shown in the collateral section as a Guarantor.
- 3 INSURANCE. Be sure your insurance paragraphs correspond with the collateral: real estate insurance for real estate collateral and personal property insurance for personal property collateral.
- 4 ENVIRONMENTAL. There are two different environmental paragraphs listed in two separate parts of the authorization: the first is the requirement to minimize risk and the second is the borrower's certifications. If commercial property secures the loan, make sure that both sets of paragraphs are included.
- 5 PERSONAL PROPERTY. Include the landlord's waiver subparagraph if leasing premises, and an assignment of lease if proceeds were used to remodel the premises.
- 6 SUBORDINATION OF LEASE: If your borrower (or the operating company) leases to third party tenants, those leases must be subordinate to your trust deed. The 7(a) boilerplate has no automatic paragraph to insert in those cases. Please manually insert subparagraph (m) from Appendix A Page A-6, which is currently a boilerplate option for only 504 loans.

Any comments or questions should be directed to Esther Schulze at 503-326-5229, or Sue Pick-

grobe at 503-326-5226.

## PORTLAND DISTRICT APPROVALS 10-01-98 thru 9-30-99

BANK NAME	# OF LOANS	\$ APPROVED
Albina Community Bank	2	\$458,000
Associates Commercial Corp	2	\$123,700
Bank of America	29	\$2,912,600
Bank of Astoria	3	\$830,000
Bank of Clark County	6	\$594,800
Bank of Salem	1	\$166,700
Bank of Southern Oregon	1	\$133,600
Bank of the Cascades	7	\$914,700
Bank of the Northwest	1	\$100,000
Bank of the West	5	\$1,929,700
Borrego Springs Bank	5	\$1,042,000
Business Loan Center	3	\$2,227,000
Centennial Bank	28	\$8,732,000
Citizens Bank	1	\$100,000
Columbia Community Bank	1	\$235,000
Columbia River Bank	4	\$286,700
Columbia State Bank	1	\$422,000
Community Bank of Grants Pass	1	\$118,500
Community First Bank	2	\$525,000
Crown American Bank	2	\$802,200
First Independent Bank	4	\$701,000
First Security Bank	6	\$690,000
First Union (The Money Store)	20	\$10,887,500
GE Capital Small Business	2	\$1,975,000
Goleta National Bank	1	\$326,000
Heller First Capital	13	\$8,635,700
Imperial Bank	2	\$1,189,000
Inland Empire Bank	1	\$24,000
KeyBank	28	\$3,943,700
Lincoln Security Bank	1	\$23,000
Newcourt Small Business Lending	33	\$17,246,900
North County Bank	1	\$610,000
Northern Bank of Commerce	1	\$200,000
Pacific Continental Bank	84	\$21,505,565
Pacific Crest Bank	2	\$1,097,420
Peoples Bank of Commerce	37	\$7,091,100
Security Bank	6	\$567,000
ShoreBank Pacific	1	\$57,300
Six Rivers National Bank	1	\$100,000

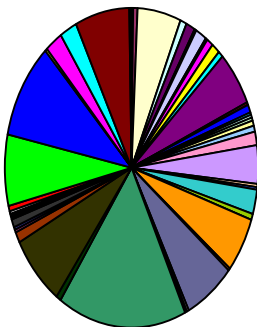
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Small Business Loan Source	5	\$2,275,000
The Cowlitz Bank	3	\$135,500
The Merchants Bank	1	\$150,000
Today's Bank	3	\$473,969
U.S. Bank	36	\$12,664,500
Valley Bank	49	\$14,203,200
Valley Community Bank	2	\$90,800
Washington Mutual Bank	11	\$2,142,000
Wells Fargo Bank	12	\$1,826,000
West Coast Bank	35	\$10,323,400
Zions First National Bank	1	\$162,000
<b>SUB TOTAL 7(a) APPROVALS</b>	<b>507</b>	<b>\$143,970,754</b>
CCD Business Development	4	\$2,113,000
Cascades West Financial Services	30	\$12,017,000
Evergreen Community Development	28	\$11,612,000
Greater Eastern Oregon	1	\$250,000
Northwest Small Business	2	\$1,238,000
Oregon Certified Business	4	\$2,526,000
<b>SUB TOTAL 504 APPROVALS</b>	<b>69</b>	<b>\$29,756,000</b>
<b>TOTAL APPROVALS</b>	<b>576</b>	<b>\$173,726,754</b>

FY99 Loan Approvals



Which piece of the pie will have *your* name next year?

## ASSET SALE

Asset sale Number One concluded with SBA selling over 4,000 loans with principal balances of approximately \$332 million. The sale resulted in net proceeds to SBA of \$195 million, which exceeded the government estimate by \$90 million.

Asset sale Number Two is underway, with the sale scheduled for mid-2000. Lenders have been sent "sale authorization forms" to authorize SBA's sale of loans in which the lenders have a percentage interest. If you haven't responded, please do so by forwarding your decision to Brian Otten via FAX at (503) 326-2808. If you have questions regarding the sale process, please call Brian at (503) 326-5224.

If you need to contact us:

### FINANCE Division

MARTINEZ, Joe	Chief, Finance	503-326-5214
LLOYD, Dennis	Loan Officer	503-326-5205
PIKE, Mariellen	LPA	503-326-5220

### LEGAL Division

PICKGROBE, Sue	District Counsel	503-326-2226
ADAMS, Pam	Paralegal	503-326-5229
SCHULZE, Esther	Legal Tech	503-326-5227

### PORTFOLIO MANAGEMENT Division

CARVER, Wayne E.	ADD/ED	503-326-5200
FUKUSHIMA, Karen	LSA	503-326-5208
OTTEN, Brian B.	Loan Officer	503-326-5224
SHELTON, John A.	Loan Officer	503-326-5327